

THE HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
a Washington corporation,

Plaintiff,

v.

MOTOROLA, INC., MOTOROLA
MOBILITY LLC, AND GENERAL
INSTRUMENT CORPORATION,

Defendants.

CIVIL ACTION No. 2:10-cv-1823-JLR

**NON-PARTY KONINKLIJKE PHILIPS
ELECTRONICS N.V.'S JOINDER IN
DEFENDANTS' MOTION TO SEAL
DOCUMENTS AND TRIAL TESTIMONY
AND EXCLUDE UNAUTHORIZED
PERSONS FROM THE COURTROOM
DURING TESTIMONY REGARDING
TRADE SECRETS**

**NOTE ON MOTION CALENDAR:
NOVEMBER 9, 2012**

Nonparty Koninklijke Philips Electronics N.V. (“Philips”) hereby joins Defendants Motorola, Inc., Motorola Mobility, LLC, and General Instrument Corporation’s (collectively “Defendants”) Motion to Seal Documents and Trial Testimony and Exclude Unauthorized Persons from the Courtroom During Testimony Regarding Trade Secrets (Dkt. No. 495) (“Motion to Seal”), to the extent it pertains to three Philips license agreements designated Defendant’s exhibits 2844, 2846, and 2847. Philips respectfully requests that the Court seal those license agreements and any exhibits or demonstratives derived from the agreements, and exclude unauthorized persons from the courtroom if the terms of those license agreements are to be discussed at trial. As described further below, compelling reasons exist to seal these agreements and related testimony because they contain Philips’ highly confidential and proprietary trade secret information, which if revealed, would cause irreparable competitive harm to Philips.

ARGUMENT

Philips understands that Defendants intend to offer the following three agreements between Philips and Motorola Inc. and Motorola Mobility, Inc. as evidence at trial in this case: (1) a May 30, 2006 “Patent License Agreement” between Motorola Inc. and Philips (Defendant’s Exhibit 2847); (2) a “Philips-Motorola Mobility 2006 Patent License Agreement” dated November 30, 2010 (Defendant’s Exhibit 2844); and (3) a “Philips-Motorola 2006 Patent License Agreement Amendment,” effective November 30, 2010 (Defendant’s Exhibit 2846) (collectively the “Philips-Motorola Licenses”). On October 29, 2012, Defendants filed their Motion to Seal, which requested, among other things, that the Court seal “Highly confidential information about licenses between Motorola and various third parties, including specific licenses, license terms and licensing negotiations,” and specifically identified Exhibits 2844, 2846, and 2847. (Dkt. No. 495 at 1 and 8 n. 7). Because the terms of the Philips-Motorola Licenses (such as pricing terms, payment terms, and other consideration) are highly confidential

1 and proprietary information to Philips, Philips joins in Defendants' Motion to Seal with respect
2 to those license agreements.

3 Philips recognizes that in the Ninth Circuit, potential trial exhibits that will be part of the
4 judicial record must meet the "compelling reasons" standard in order to be sealed. *Kamakana v.*
5 *City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *see In re Elec. Arts, Inc.*, 298
6 F. App'x 568, 569 (9th Cir. 2008) (applying the "compelling reasons" standard to potential trial
7 exhibits). Under that standard, "a district court must weigh relevant factors, base its decision on
8 a compelling reason, and articulate a factual basis for its ruling without relying on hypothesis or
9 conjecture." *Dish Network L.L.C. v. Sonicview USA, Inc.*, No. 09-cv-1553 L (NLS), 2009 WL
10 2224596, *7 (S.D. Cal. July 23, 2009).

11 To determine whether a document should be sealed, a district court must weigh relevant
12 factors, which include "the public interest in understanding the judicial process and whether
13 disclosure of the material could result in improper use of the material for scandalous or libelous
14 purposes or infringement upon trade secrets." *Id.* (quoting *Pintos v. Pac. Creditors Ass'n*, 565
15 F.3d 1106, 1116 n.6 (9th Cir. 2009)). The U.S. Supreme Court has, however, explained that "the
16 right to inspect and copy judicial records is not absolute," and that "the common-law right of
17 inspection has bowed before the power of a court to insure that its records are not used . . . as
18 sources of business information that might harm a litigant's competitive standing." *Nixon v.*
19 *Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) (internal quotation omitted).

20 The Philips-Motorola Licenses contain highly confidential information belonging to
21 Philips. In particular, they include terms of confidential license agreements between Philips and
22 its licensees or licensors, including pricing terms, royalty rates, and other considerations that are
23 Philips' trade secrets.¹ Public disclosure of these terms, which are not otherwise available to
24

25 ¹ Philips took similar steps to seal the terms of its confidential license agreements with others in
the *Apple v. Samsung Electronics Inc.* case, pending in the Northern District of California, and

competitors or potential licensees, would cause irreparable competitive harm to Philips, particularly in future negotiations with potential licensees. *Declaration of Michael Marion*, ¶¶ 3-5 (“Marion Decl.” filed concurrently herewith).

More specifically, the terms of the Philips-Motorola Licenses offer insights into Philips’ licensing plans and strategies that are still in use today. *Marion Decl.*, ¶ 5. Potential licensees and licensors may use such information to their advantage in ongoing or future licensing negotiations with Philips. *Marion Decl.*, ¶ 4-5. Such information is exactly the type of exceptionally sensitive information that deserves protection. Indeed, the Ninth Circuit, in the *Elec. Arts* case, 298 F. App’x at 569-70, held that such license agreement terms should be sealed because they are trade secrets that, if disclosed, will irreparably harm a party. District courts have applied the same rationale when faced with requests to seal licensing information. *See Powertech Technology, Inc. v. Tessera, Inc.*, No. C 11-6121 CW, 2012 WL 3283420, *9 (N.D. Cal. Aug. 10, 2012) (sealing licensing information); *Abaxis, Inc. v. Cepheid*, No. 10-cv-02840-LHK, 2011 WL 6002522, *1, n. 1 (N.D. Cal. Nov. 30, 2011) (sealing term sheet of licensing negotiations).

Compelling reasons exist to seal the Philips-Motorola Licenses. Philips respectfully requests that the Court issue an order sealing the Philips-Motorola Licenses (Defendant’s Exhibits 2844, 2846, and 2847), any exhibits or demonstratives derived from the Philips-Motorola Licenses, and the courtroom if the terms of the Philips-Motorola Licenses are to be discussed at trial.

the Court in that case granted the protection sought by Philips. *See Apple Inc. v. Samsung Electronics Inc.*, No. 11-cv-01846-LHK, 2012 WL 3283478 at *12 (N.D. Cal. Aug. 9, 2012).

1 Dated: November 7, 2012

Respectfully submitted,

2 DORSEY & WHITNEY LLP

3 /s/ Douglas F. Stewart

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CERTIFICATE OF SERVICE

I, Douglas Stewart, certify that on November 7, 2012:

- NON-PARTY KONINKLIJKE PHILIPS ELECTRONICS N.V.'S JOINDER IN DEFENDANTS' MOTION TO SEAL DOCUMENTS AND TRIAL TESTIMONY AND EXCLUDE UNAUTHORIZED PERSONS FROM THE COURTROOM DURING TESTIMONY REGARDING TRADE SECRETS;
- DECLARATION OF MICHAEL MARION

were electronically filed with the Clerk of the Court using the CM/ECF system and thereby served on counsel for all parties via ECF-generated e-mail and notification.

Dated this 7th day of November, 2012.

/s/ Douglas F. Stewart

Douglas F. Stewart